

## CHAPTER 271.

## COSTS AND FEES IN COURTS OF RECORD.

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271.01 **Costs allowed to plaintiff.** Costs shall be allowed of course to the plaintiff upon a recovery in the following cases, except when otherwise provided by law:

(1) In an action for the recovery of real property or when a question of title to real property was in issue at the trial.

(2) In an action of replevin when the value of the property recovered is fifty dollars or more.

(3) In an action of which a justice's court has no jurisdiction.

(4) In an action for assault and battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, but if the plaintiff recover less than fifty dollars damages he shall recover no more costs than damages.

(5) In other actions of tort for the recovery of money when the plaintiff shall recover fifty dollars or more.

(6) In an action on contract wherein real estate shall have been attached, without regard to the amount recovered, and in an action on contract when the plaintiff shall recover one hundred dollars or more.

(7) In an action on contract when a justice of the peace has jurisdiction wherein the amount claimed shall exceed two hundred dollars, but in such cases the plaintiff shall recover only such taxable costs as the court in its discretion shall allow, when the recovery shall be less than fifty dollars. [1935 c. 541 s. 188]

**Note:** Though the complaint demanded more than one hundred dollars upon contract, where the recovery was for less than that sum the defendant was entitled to costs as of course. *Rusch v. Noack*, 205 W 660, 238 NW 799.

An action to enjoin defendants from denying the use of a silo filler to plaintiffs as co-owners and for damages was for equitable relief, not within the jurisdiction of a justice of the peace, and was not "an action on contract" within 271.01 (6) and hence the plaintiffs, who recovered less than \$100, were entitled to costs under 271.01 (3) and 271.02 (2). *Kuenzi v. Leisten*, 227 W 506, 279 NW 68.

Where a motion to be joined as a party to an action is denied, costs of the motion may be imposed on the mover but he cannot be taxed the cost of the action. *Anheuser v. West Lawn Cemetery Co.*, 230 W 262, 282 NW 577.

271.02 **Costs limited, discretionary.** (1) When several actions are brought against parties who might have been joined as defendants and the actions are consolidated under section 269.05 no costs, other than disbursements, shall be allowed to the plaintiff in excess of what he would be entitled to had he brought but one action.

(2) In equitable actions and special proceedings costs may be allowed or not to any party, in whole or in part, in the discretion of the court, and in any such case the court may award to the successful party such costs (exclusive of disbursements) not exceeding \$100, as the court deems reasonable and just, in view of the nature of the case and the work involved. This subsection refers only to such costs and fees as may be taxed by the authority of the statutes, independent of any contract of the parties upon the subject,

The provision of (5) is broad enough to permit the taxation of costs of a first trial in a judgment entered in a second trial where the trial court did not order payment of costs as a condition of granting the new trial. *Wendt v. Fintch*, 235 W 220, 292 NW 890.

A plaintiff, recovering \$67 in an action for damages sustained in an automobile collision, brought in a county court having civil jurisdiction practically coextensive with that of the circuit court, was entitled to costs under (5) even though the action might have been brought in justice's court. *Reilly v. Theisen*, 243 W 366, 10 NW (2d) 108.

Dollar suit tax levied by this section does not apply to entry of judgments on cognovit. 32 Atty. Gen. 186.

which contract shall apply unless the court finds that the provisions thereof are inequitable or unjust. [1935 c. 541 s. 189; 1937 c. 145; Supreme Court Order, effective July 1, 1943]

**Comment of Advisory Committee:** The amendment to 271.02 (2), effective July 1, 1943, conforms closely to the opinion by Paine, J., in *Boyd v. Sumner*, 10 W 41.

**Revisor's Note, 1935:** (2) is from the last clause of old 271.01. The change of location avoids conflict between 271.01 and 271.03. (Bill No. 50 S. s. 189).

Costs which were inserted in the judgment without notice to the adverse party and without a cost bill should be stricken from the judgment. *Luebke v. Watertown*, 230 W 512, 284 NW 519.

Where four separate actions arising out of the same automobile collision were consolidated and tried together and there was a verdict in each action against the defendant, the allowance of separate costs in each action was proper. *Hansberry v. Dunn*, 230 W 626, 284 NW 556.

In an action for an accounting against the trustees the allowance of costs to a party was in the discretion of the trial court under (2) and the refusal of the court to award the unsuccessful plaintiffs their costs and disbursements was not error on

a record not disclosing abuse of discretion. *Welch v. Welch*, 235 W 282, 290 NW 758, 293 NW 150.

The action being equitable, costs were taxable pursuant to 271.02 (2), Stats. 1941, and thereunder the trial court might allow costs up to \$100 and disbursements, and hence, where the court allowed \$75 costs but no disbursements, there was no need to tax costs or serve a cost bill. *Doherty v. Rice*, 240 W 389, 3 NW (2d) 734.

Where, although alleging that all of the defendants entered into a conspiracy with the fraudulent purpose of hindering, delaying, or defrauding creditors of a corporation, the purpose of the action was to set aside and annul alleged fraudulent conveyances and obligations, and the action applied to each defendant only as his interests appeared, and was in fact a joinder of several causes of action to avoid multiplicity of suits, and involved separate issues to be tried as to each defendant, the trial court had authority in its discretion to tax costs in favor of each defendant. *Angers v. Sabatinelli*, 246 W 374, 17 NW (2d) 232.

**271.03 Costs to defendant.** (1) Costs shall be allowed of course to the defendant in the actions mentioned in section 271.01 unless the plaintiff be entitled to costs, but where there are several defendants not united in interest and making separate defenses by separate answers, and the plaintiff recovers against one or more but not all of such defendants, the court may award costs to such of the defendants as have judgment in their favor or to any of them.

(2) If the defendant is entitled to costs he shall recover costs on the basis on which the plaintiff would have recovered if the demands of his complaint had been established. [1935 c. 541 s. 190; 1937 c. 145]

**Note:** Costs may not be taxed against the state. *State v. Gether Co.*, 203 W 311, 234 NW 331.

In separate actions, tried together, for personal injuries by bus passengers against a bus company and the liability insurer of the owner of an automobile with which a bus in which the plaintiffs were riding collided, the defendant automobile insurer, not united in interest with the defendant bus company and making separate defenses by separate answers, was, in respect to its cross-complaint against the defendant bus company for contribution, a "plaintiff" as to the bus company, and where recovery was had by the plaintiff bus passengers only against the automobile insurer, and judgments of dismissal were entered in favor of the bus company, costs should have been allowed to the bus company against the cross-complaining automobile insurer as

well as against the other plaintiffs, instead of only against the other plaintiffs. *De-Keyser v. Milwaukee Automobile Ins. Co.* 236 W 419, 295 NW 755.

The recovery of costs is wholly dependent on statutory provisions. Where the interests of all defendants are identical, the fact that the defendants appear and answer through separate attorneys, who participate in the defense of the action, does not entitle the prevailing parties to separately tax attorney fees. *Rheingans v. Hepfler*, 243 W 126, 9 NW (2d) 585.

On the granting of the defendant's motion (based on a plea that the action is prematurely brought) for summary judgment, dismissing the complaint without prejudice, the defendant is entitled to costs and disbursements under 271.03 and 271.04, Stats. 1943. *Binsfeld v. Home Mut. Ins. Co.*, 247 W 273, 19 NW (2d) 240.

**271.04 Items of costs.** When allowed costs shall be as follows: (1) FEES. (a) When the amount recovered or the value of the property involved is one thousand dollars or over, the costs (exclusive of disbursements) shall be one hundred dollars; when it is less than one thousand dollars and is five hundred dollars or over, fifty dollars; when it is less than five hundred dollars and is two hundred dollars or over, twenty-five dollars; and when it is less than two hundred dollars, fifteen dollars.

(b) When no money judgment is demanded and no specific property is involved, or where it is not practical to ascertain the money value of the rights involved, the costs under paragraph (a) shall be fixed by the court, but shall not be less than fifteen dollars nor more than one hundred dollars.

(2) DISBURSEMENTS. All the necessary disbursements and fees of officers allowed by law, the suit tax, the compensation of referees, a reasonable disbursement for the service of process or other papers in an action when the same are served by a person authorized by law other than an officer, but in no event shall such item exceed the authorized sheriff's fee for the same service, amounts actually paid out for certified copies of papers and records in any public office, postage, telegraphing, telephoning, express or for plats and photographs, not exceeding fifteen dollars for the last two items, and in actions relating to or affecting the title to lands, the cost of procuring an abstract of title to such lands.

(3) JUDGMENT ON CONFESSION. When a judgment for damages is entered upon confession or upon a note or bond and warrant of attorney five dollars shall be recovered for costs exclusive of disbursements.

(4) INTEREST ON VERDICT. When the judgment is for the recovery of money, interest at the legal rate from the time of verdict or report until judgment is entered shall be computed by the clerk and added to the costs.

(5) DISBURSEMENTS IN TIMBER TRESPASS. In actions founded upon the unlawful cutting of timber, or such cutting and its conversion, or such cutting and its unlawful detention, when the value of such timber or the damages recovered exceeds fifty dollars, full costs shall be recovered by the plaintiff, and there shall be included therein the actual reasonable expense of one survey and ascertainment of the quantity of timber cut, made after the commencement of the action, by one surveyor and one assistant, if proved as a necessary disbursement. And the defendant shall recover like costs in the same manner in case the plaintiff is not entitled to costs.

(6) If the judgment is by default or upon voluntary dismissal by the adverse party the costs taxed under subsection (1) shall be one-half what they would have been had the matter been contested.

(7) If the offer of judgment pursuant to section 269.02 is not accepted and the plaintiff fails to recover a more favorable judgment he shall not recover costs but the defendant shall have full costs to be computed on the demand of the complaint.

(8) In all actions brought for the benefit of any county, town, village, city or other municipal corporation of this state by a citizen taxpayer, the plaintiff shall be entitled to recover for his own use, in case he shall prevail, the taxable costs of such action and such part of the recovery as the court shall deem reasonable, as attorney's fees, not to exceed 20 per cent of such recovery, and not to exceed \$500. [1935 c. 541 s. 191, 192; 1937 c. 145; 1943 c. 452]

**Cross Reference:** See 204.11 as to recovery of premium on suretyship obligation given by a fiduciary.

**Note:** Witness is entitled to statutory fee and mileage, notwithstanding witness is plaintiff's wife, son or other relative. Plaintiff testifying in his own case is not entitled to witness fee. Affidavit stating actual miles traveled within state is essential to allowance of witness' mileage. Leonard v. Bottomley, 210 W 411, 245 NW 849.

A plaintiff recovering upon contract in an action for deceit was not entitled to tax costs as in a tort action, but was limited to taxing costs as allowed in contract actions. The recovery determines the nature of the action for the purpose of taxing costs where amendments to the pleadings are allowed. Mahonna v. Chaimson, 214 W 396, 253 NW 391.

The allowance of ten per cent attorney's fees was proper under a provision in the notes for the payment of all costs and expenses, including ten per cent attorney's fees, paid or incurred in collecting the notes; the contractual obligation incurred by the maker being controlling. Estate of McAskill, 216 W 276, 257 NW 177.

Addition by clerk of court of interest on judgment for time from commencement of action until entry of judgment, without court order or adjudication, held error. Malliet v. Super Products Co., 218 W 145, 259 NW 106.

Where two actions were consolidated with the consent of the plaintiffs, the taxation of costs in each action for the attendance of the same witnesses on the same days at a single trial was improper. McCaffrey v. Minneapolis, St. P. & S. S. M. R. Co., 222 W 311, 267 NW 326, 268 NW 872.

In an action for five thousand dollars, where summary judgment dismissing the complaint was granted the allowance of costs to the defendant was governed by 271.04 (1) allowing costs of one hundred dollars when the amount involved is one thousand dollars or over, and not by 271.07 restricting the allowance of costs on a motion to ten dollars. French v. Continental Assur. Co., 227 W 203, 278 NW 388.

Under this section the amount paid as a premium by a nonresident plaintiff for a bond given as security for costs cannot be taxed as costs. Leonard v. Bottomley, 210 W 411, 245 NW 849.

Although the recovery was actually for the instalments presently due on an insurance policy, amounting only to \$197.04, the case determined the liability of the insurer

on the entire policy, so that the recovery in legal effect was for the full amount payable under the policy, which was in excess of \$1,000, and hence attorney fees of \$100 were properly allowed to the plaintiff under 271.04 (1) (a). Tully v. Prudential Ins. Co. 234 W 549, 291 NW 804.

Where the court granted a new trial on the ground of excessive damages, and this was the gist of the controversy on an appeal from the order granting a new trial, and the order was affirmed, the damages were not "liquidated" by the verdict in the first trial, and the trial court did not err, under (4), in denying the plaintiff interest on the verdict in the second trial from the date of the first verdict. [Zeidler v. Goelzer, 191 W 378, distinguished.] Wendt v. Fintch, 235 W 220, 292 NW 890.

The matter of the amount of dividends improperly distributed by the trustees as income being left for the determination of the trial court on remand of the cause, the matter of additional attorneys' fees should also be determined by the trial court, which in its discretion may properly allow additional attorneys' fees based on the additional recovery, and may order the payment of a reasonable amount to the accountants for additional services to be rendered in assisting the trial court in determining the correct amount of the dividends. Welch v. Welch, 235 W 232, 290 NW 758, 293 NW 150.

The allowance of a disbursement for stenographer's fees for "transcript" was improper where there was nothing to show what the transcript was of or for, or why it was necessary, although the general affidavit of plaintiff's counsel stated that the items of the cost bill for disbursements were necessarily incurred. Morse Chain Co. v. T. W. Meiklejohn, Inc., 241 W 45, 4 NW (2d) 162.

This section, permitting an allowance of \$100 as costs (exclusive of disbursements) to a plaintiff in a tort action when the recovery is \$1,000 or over, does not authorize the allowance of more than one \$100 item of costs where there is more than one trial of the action. Morse Chain Co. v. T. W. Meiklejohn, Inc., 241 W 45, 4 NW (2d) 162.

Where his complaint demanded judgment for \$475.14 with interest thereon which would have amounted to \$31.60 to the date of the trial, the plaintiff's recovery, if the demands of his complaint had been established, would have been in excess of \$500, and hence the defendant, on prevailing, was entitled to tax attorney fees of \$50, under 271.03 (2) and 271.04 (1), Stats. 1943. North American Seed Co. v. Cedarburg Supply Co. 247 W 31, 18 NW (2d) 466.

271.06 [Repealed by Supreme Court Order, effective Jan. 1, 1934]

271.07 **Costs on motion.** Costs may be allowed on a motion, in the discretion of the court or judge, not exceeding ten dollars, and may be absolute or directed to abide the event of the action.

**Note:** See note to 271.04 citing *French v. Continental Assur. Co.*, 227 W 203, 278 NW 388.

An order granting the plaintiff leave to amend his complaint on condition of paying motion costs of \$10 to each of the demurrants was authorized where, although there was only one complaint, the plaintiff attempted to state several causes of action against different defendants, and there were five separate demurrers and five separate orders disposing of them, and plaintiff's leave to amend was granted as to each of the five demurrants. *Angers v. Sabatinelli*, 235 W 422, 293 NW 173.

271.08 **Costs on appeal from justice court; certiorari.** (1) In actions appealed from justices' court, where there is no new trial, if the judgment be affirmed or the appeal dismissed the respondent shall have costs; if reversed, the appellant; if affirmed in part and reversed in part, the court may award the costs or such part thereof as shall seem just to either party. Where there is a new trial costs shall be awarded to the successful party; but if the appeal be from a judgment in favor of the appellant he shall have costs only when he shall obtain a more favorable judgment, and otherwise the respondent shall have costs. In all such cases full costs shall be ten dollars fees and all disbursements made for state tax, return of the justice, and officers' and witnesses' fees, together with all costs taxable in the justice's court in such action.

(2) Upon certiorari to justice court the same costs shall be awarded to the successful party as provided by subsection (1), where there is no new trial. [1935 c. 541 s. 193]

271.09 [Remembered section 271.08 by 1935 c. 541 s. 193]

271.10 **Taxation of costs.** (1) **CLERK'S DUTY, NOTICE, REVIEW.** The clerk shall tax and insert in the judgment and in the docket thereof, if the same shall have been docketed, on the application of the prevailing party, upon three days' notice to the other, the sum of the costs and disbursements as above provided, verified by affidavit.

(2) **COST BILL, SERVICE.** All bills of costs shall be itemized and served with the notice of taxation.

(3) **OBJECTIONS, PROOFS, ADJOURNMENT.** The party opposing such taxation, or the taxation of any particular item shall file with the clerk a particular statement of his objections, and he may produce proof in support thereof and the clerk may adjourn such taxation, upon cause shown, a reasonable time to enable either party to produce such proof.

(4) **COURT REVIEW.** The clerk shall note on the bill all items disallowed, and all items allowed, which have been objected to; and his action may be reviewed by the court on motion of the party aggrieved made and served within ten days after taxation, which review shall be founded on the bill of costs and the objections and proof on file in respect thereto. No objection shall be entertained on such review which was not made before the clerk, except to prevent great hardship or manifest injustice. [Court Rule XXXII except s. 4; Supreme Court Order, effective Jan. 1, 1934]

**Note:** The trial court, on review of the taxation of costs, could effectively approve and allow an item of \$50 for attorney fees inserted in a bill of costs and allowed by the clerk without previous authorization by the court; the court having control of the costs to the extent to which discretion is vested in him by the statutes, and having the power to exercise this discretion either prior to the taxing of costs or on a review of the costs. *Petition of Herman*, 233 W 653, 290 NW 119.

271.11 **Disbursements, how proved.** Charges in a bill of costs for witness fees, or copies of documents or other disbursements, except to officers for services shall not be taxed without an affidavit stating the distance the witnesses respectively traveled and the days they actually attended, and an affidavit that such copies were necessarily obtained for use; nor shall such other disbursements be allowed without an affidavit specifying the items thereof, nor unless they appear to have been necessary and reasonable in amount. [1935 c. 541 s. 194]

**Note:** Principal officers of a corporation are not parties to an action by or against the corporation, within the rule that witness fees may not be taxed for the attendance of a party to an action, and witness fees of such officers may be allowed. *Morse Chain Co. v. T. W. Meiklejohn, Inc.*, 241 W 45, 4 NW (2d) 162.

271.12 **Costs may be set off.** If, in any action, a recovery be had by one party and costs be awarded to the other the court may set off one against the other and render judgment for the balance.

271.13 **Referee; court to fix and allow fees.** After the trial of any issue by a referee pursuant to a compulsory reference for that purpose his fees and expenses shall be fixed by the court in which his report has been filed and paid by the county as other circuit court expenses are paid. In all other cases the compensation of referees shall be three dollars for each day necessarily occupied with the business of the reference; but the parties may agree in writing upon any other rate of compensation.

271.131 **Taxing costs on compulsory references.** In all cases of compulsory reference wherein the fees claimed by the referee shall exceed fifty dollars, such fees shall not

be allowed until a hearing is had thereon, upon ten days' notice to the district attorney of the county, accompanied by a copy of the bill. [*Court Rule XXI s. 3; Supreme Court Order, effective Jan. 1, 1934*]

**271.14 Fiduciary; liability for costs limited; bond premium.** In any action or proceeding prosecuted or defended in any court in Wisconsin by an executor, administrator, guardian ad litem, trustee of an express trust, general guardian or a person expressly authorized by statute, unless otherwise specially provided, costs shall be recovered as in an action by and against a person prosecuting or defending in his own right; but such costs shall be chargeable only upon or collected of the estate, fund or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action, proceeding or defense. In all actions or proceedings in which any receiver, assignee, guardian, guardian ad litem, executor, administrator, or other fiduciary may be entitled to recover costs he may recover in addition to other costs, such sum paid a company authorized by the laws of this state, so to do for becoming his surety upon any bond or other obligation given by him in his representative capacity, in such action or proceeding, pursuant to law or the order of any court or judge, as may be allowed by the court or judge, in which or before whom he accounts, not exceeding two per centum per annum on the amount secured by such obligation, or any less amount which he may have paid any such company for such purpose.

**271.15 Assignee's liability for costs.** In actions in which the cause of action shall, by assignment, after the commencement of the action or in any other manner become the property of a person not a party to the action such person shall be liable for the costs in the same manner as if he were a party; and payment thereof may be enforced by attachment.

**271.16 Settlement, costs on.** Upon settlement of an action no greater sum shall be demanded for costs than at the rate prescribed in this chapter. [*1935 c. 541 s. 196*]

**271.17 Folio defined.** (1) The term "folio," when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every figure necessarily used as a word; and any portion of a folio, when in the whole draft or paper there shall not be a complete folio and when there shall be any excess over the last folio, shall be computed as a folio. [*Court Rule X; Supreme Court Order, effective Jan. 1, 1934; Supreme Court Order, effective Jan. 1, 1935; Supreme Court Order, effective July 1, 1939*]

**Note:** Punctuation marks are not counted. Each digit of a figure is counted as a separate word or figures under this section. Each word. 28 Atty. Gen. 171.

**271.18** [*Repealed by 1935 c. 541 s. 197*]

**271.19 Records copied not to be taxed for.** No record, writ, return, pleading, instrument or other writing copied into any proceeding, entry, process or suggestion shall be computed as any part of the draft of such proceeding, entry, process or suggestion.

**271.20** [*Repealed by 1935 c. 541 s. 198*]

**271.21 State tax on actions.** In each action in a court of record having civil jurisdiction there shall be levied a tax of one dollar which shall be paid to the clerk at the time of the commencement thereof, which tax on suits in the circuit court shall be paid into the state treasury and form a separate fund to be applied to the payment of the salaries of the circuit judges; and which tax in other courts of record the salaries of the judges of which are wholly paid by the counties or by any county and city jointly shall be paid to the county treasurer to create a fund to be applied to the payment of the salaries of such judges.

**Cross Reference:** Suit tax is required by sec. 18, art. VII, Const. 25 Atty. Gen. 401. Neither are federal land banks and Federal Farm Mortgage Corporation.

**Note:** See note to 262.04, citing 27 Atty. Gen. 84. 25 Atty. Gen. 495. But state tax may not be refunded to Home Owners Loan Corporation in absence of statute for such refund, unless action is brought for recovery. 25 Atty. Gen. 499.

Home Owners Loan Corporation is not subject to state tax of one dollar provided by this section for commencement of action in court of record having civil jurisdiction.

**271.22 What county to pay costs when venue changed, taxation, certification.** (1) In all proceedings, including criminal actions, where a change of venue is had (except in cases where such change is made because the action was not brought in the proper county), or when an action, occupying a day or more, is tried outside the county wherein pending, the county in which such action was commenced shall pay to the county in which the same shall be tried the following expenses arising out of such change of venue:

(a) The per diem fees of the clerk or his deputies, all the taxable costs, disbursements and fees of such clerk on any proceeding or action.

(b) The per diem fees of the petit jurors actually in attendance upon said court.

(c) The per diem fees of the sheriff, undersheriff and deputies in attendance upon said court.

- (d) All lawful charges for boarding the jury.
- (e) The legal fees of all witnesses in any criminal case or proceedings which are a charge against the county.
- (f) The fees or compensation of the reporter in attendance upon said court, and such other fees allowed to such reporter in criminal proceedings which are chargeable to the county.
- (g) Such other lawful costs, charges, fees, and disbursements which are chargeable to the county, and all lawful costs, disbursements and charges which any such county may be subjected to or may incur in any such action or proceedings.
- (h) All charges for subpoenaing witnesses in any criminal case or proceedings and which are a proper charge against the county. The fees of such officers, jurors and reporter to be estimated for each day and part of a day, not less than half a day, occupied in disposing of any such action.

(2) The clerk shall make out a correct bill of all the expenses which shall accrue under this section and have the same taxed and allowed by the presiding judge of such court; and when so taxed shall transmit the same to the county clerk of the county in which said action was commenced. A county order therefor shall issue in favor of the county, in which any such action or proceedings were had, or tried.

(3) Wherever costs are to be taxed against a county, pursuant to the provisions of this section, the district attorney of the county where the action or proceeding was tried shall serve upon the district attorney of the county sought to be charged with such expense a copy of such bill of expenses, together with eight days' notice of the time and place the same will be taxed before the presiding judge of such court. No such bill of expense shall be allowed unless such notice is given or is waived in writing. [1935 c. 541 s. 199]

Revisor's Note, 1935: (2) comes from 271.26. (3) comes from 271.261. (Bill No. 50 S. s. 199)

**271.23 Actions by or against county.** In all actions by or against a county, and in actions or proceedings by or against county officers in their name of office, costs shall be awarded to the prevailing party as in actions between individuals.

**271.24 Action against city official, cost.** Costs, if any, in an action against a city officer in his official capacity, except the action directly involve the title to his office, shall not be awarded against such officer, but may be awarded against the city.

**271.25 Court costs, repaid counties.** In any civil action or proceeding tried in a circuit court of this state after the first day of October, 1918, either by or against the state or any of the state officers in their official capacity, or any of the state commissions, under the provisions of the statutes, there shall be repaid out of the state treasury to said county upon the certificate of the presiding judge and the clerk of said court and the approval of the attorney-general and the audit of the secretary of state:

- (1) The per diem of the clerk of court.
- (2) The per diem and mileage allowed by law to the petit jurors actually in attendance upon said court during the trial of any such action or proceeding.
- (3) In case a referee shall be appointed in any such action or proceeding, the fees of the referee and the necessary expenses of such reference.
- (4) The fees of the reporter of the court for transcribing the testimony taken in any action against the public service commission in which these statutes require the court to transmit such testimony to such commission. Expenses under this section shall be charged to the legal expense appropriation provided in subsection (2) of section 20.08, except where elsewhere specifically charged to some other appropriation.

**271.26** [Repealed by 1935 c. 541 s. 201]

**271.261** [Court Rule XXXII, s. 4; Supreme Court Order, effective Jan. 1, 1934; repealed by 1935 c. 541 s. 202]

**271.27 Security for costs.** In all cases where it shall appear reasonable and proper the court may require the plaintiff to give sufficient security for such costs as may be awarded against him. [1935 c. 541 s. 203]

**271.28 Security for costs.** (1) DEFENDANT MAY REQUIRE. Except as otherwise provided by section 271.29, the defendant may require the plaintiffs to file security for costs if the plaintiffs are all nonresidents; or are foreign corporations, nonresident executors, administrators, guardians, trustees or receivers; or are trustees or assignees of any debtor; or are imprisoned for crime for terms less than life; or shall take issue upon the answer of the garnishee.

(2) ORDER FOR SECURITY. Upon proof by affidavit entitling the defendant thereto the court or judge shall order the plaintiffs to file security for costs in a sum therein mentioned, not less than two hundred and fifty dollars, within twenty days after the service upon them of a copy of such order, and that all proceedings on the part of such plaintiffs be stayed until security is filed.

(3) **SECURITY, HOW GIVEN.** Within the time required the plaintiffs shall file with the clerk of the court, and give the defendant notice thereof, an undertaking with sureties, each of whom shall justify, by affidavit, in the sum stated in the undertaking, above liabilities and exemptions, in property in this state, conditioned to pay on demand all costs that may be awarded to the defendant in such action in any court, not exceeding the sum mentioned in such order. Upon failure to file such undertaking the court may, upon motion of the defendant, dismiss the action.

(4) **DEPOSIT IN LIEU OF UNDERTAKING.** The plaintiffs in lieu of such undertaking may deposit with the clerk of the court (who shall give a receipt therefor) money equal to the amount specified in the order for security, and give notice of such deposit. [1935 c. 541 s. 204; Supreme Court Order, effective July 1, 1945]

**Revisor's Note, 1935:** The several provisions for security which go together are assembled. 271.30 stood next to 271.28 until 1927 when 271.29 was interpolated. 271.28 and 271.30 go together; 207 W 481, 483, 271.31 goes with 271.28 and 271.30. They were together till 1927. (Bill No. 50 S. s. 204)  
A foreign corporation becoming plaintiff in an action in a court of record of this state must, on demand by defendant, furnish security for costs in such sum as shall be fixed by order and making of such order is the positive duty of the court, the word "shall" in 271.30 (Stats. 1931) precluding discretion except as to amount of security to be furnished, which cannot be fixed at a less sum than two hundred fifty dollars. State ex rel. Firemen's Fund Ins. Co. v. Hoppmann, 207 W 481, 240 NW 884, 242 NW 133.

**271.29 Security for costs by poor persons.** (1) Any person may commence, prosecute or defend any action or proceeding in any court, or any writ of error or appeal therein, without being required to give security for cost, upon filing in said court his affidavit that because of his poverty he is unable to pay the costs of said action or proceeding, or any writ of error or appeal therein, or to give security for the same, and that he believes that he is entitled to the redress that he seeks in such action or proceeding, or writ of error or appeal, and setting forth briefly the nature of his cause or appeal, or defense.

(2) The court may dismiss any action or proceeding brought under this section if it be made to appear that the allegation of poverty is untrue; or may require security as in other cases. [1935 c. 541 s. 205]

**Revisor's Note, 1935:** 271.29 is amended to express the court's construction. State ex rel. Firemen's Fund Ins. Co. v. Hoppmann, 207 W 481, 240 NW 884. (Bill No. 50 S. s. 205)

**271.30, 271.31, 271.32** [Renumbered section 271.28 by 1935 c. 541 s. 204]

**271.33 Additional security for costs.** If any surety on any undertaking given under section 271.28 shall remove from the state or be deemed at any time insufficient the court or presiding judge may require the plaintiff to give a new undertaking, and every person becoming surety thereon shall be liable for all costs, from the commencement of the action, in like manner as if he had been the original surety. [1935 c. 541 s. 206; Supreme Court Order, effective July 1, 1945]

**271.34 Attorney for plaintiff liable for costs.** In any case in which the defendant, at the time of the commencement of the action, may require security for costs the attorney for the plaintiff shall be liable for such costs not exceeding \$100, until security therefor is filed, whether such security shall have been required by the defendant or not; but such attorney may relieve himself from such liability by filing an undertaking as prescribed by section 271.28, and giving notice thereof. [1935 c. 541 s. 207; Supreme Court Order, effective July 1, 1945]

**271.35 to 271.39** [Renumbered section 251.23 (1) to (5) by 1935 c. 541]

**271.40 Table of official fees.** Every officer whose fees are fixed and limited by law shall publish in some conspicuous place in his office a fair table of such fees. For each day he shall neglect to so publish the same he shall forfeit two dollars. [1935 c. 541 s. 213]

**271.41 Official fees.** (1) **ONLY LEGAL FEES TAKEN.** No judge, justice, sheriff or other officer or person to whom any fees or compensation shall be allowed by law for any service, shall take or receive any other or greater fee or reward for such service than is allowed by statute.

(2) **NO SERVICE, NO FEES.** No fee or compensation shall be demanded or received by any officer or person for any such service unless such service was actually rendered, except when he is allowed by law to require prepayment and except in case of prospective costs allowed by law.

(3) **PENALTY.** Every officer or person violating this section shall be liable to the party aggrieved in the sum of twenty-five dollars damages and also for the actual damages sustained. [1935 c. 541 s. 214]

**Note:** Where state employe drives his own car and receives compensation pursuant to chapter 373, Laws 1931, he may not accept additional compensation from other state employes who may ride with him, and such other state employes may not receive from state as expenses any amount so paid. 20 Atty. Gen. 882.

**271.42, 271.43** [Renumbered section 271.41 by 1935 c. 541 s. 214]

271.44 **Receipts for fees.** Every officer upon receiving fees for any official duty or service shall, if required by the person paying the same, deliver to him a particular receipted account of such fees, specifying for what they respectively accrued; and if he fails to do so he shall be liable to the party paying the same for three times the amount paid. [1935 c. 541 s. 215]

271.45 **Fees for same service allowed to all.** When a fee is allowed to one officer the same fee shall be allowed to other officers for the performance of the same services, when such officers are by law authorized to perform such services.

**Note:** Conservation wardens are entitled treasury to credit of conservation fund. 20 to charge same mileage as sheriff or other Atty. Gen. 568. officer, which fees must be turned in to state

271.46 **Taxation after settlement.** Upon the settlement of an execution by a defendant or upon settling any action or demand the sheriff or attorney claiming any fees which shall not have been taxed shall, upon being required by the defendant and on his paying the expenses thereof, have his fees taxed by some proper officer authorized to tax costs in the court in which the action may be pending or from which the execution shall have been issued.

271.47 **Fees not collectible till taxed.** No sheriff, attorney or other person shall collect any fees, after having been required as aforesaid to have the same taxed, without such taxation having been made.

271.48 **Duty of officers taxing costs.** Every officer authorized to tax costs in any court for services in any proceeding shall examine the bills presented for taxation, whether such taxation be opposed or not, and must be satisfied that the items charged are correct and legal, and shall strike out all charges for services which, in his judgment, were not necessary. [1935 c. 541 s. 216]

271.49 [Renumbered section 14.66 by 1935 c. 541 s. 217]

271.50 [Renumbered section 326.02 by 1927 c. 523 s. 40]